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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 2 दिसम्बर, 2015

आ.अ. 9 (अ). - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (क) के अनुसरण में, निर्वाचन आयोग 2014 की निर्वाचन याचिका सं0 03 में केरल उच्च न्यायालय के आदेश दिनांक 10.04.2015 को एतद्द्वारा प्रकाशित करता है।

(निर्णय के लिए अंग्रेजी पाठ देखें)

[सं. 82/केरल-लोक सभा/3/2014]

आदेश से,
दारसु थांग, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 2nd December, 2015

O.N. 9 (E).— In pursuance of section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Kerala dated 10.04.2015 in Election Petition No.03 of 2014.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

El.Pet..No. 3 of 2014

PETITIONER:

T.SIDDIQU,AGED 39 YEARS,S/O.KASIM,

THOOVACODE HOUSE,MARIKUNNU P.O.,

PIN-673012,KOZHIKODE DISTRICT.

BY SRI.T.KRISHNAN UNNI (SENIOR ADVOCATE.)

ADVS.SRI.JITHIN PAUL VARGHESE

SRI.SAJU.S.A

RESPONDENTS:

1. P.KARUNAKARAN,S/O.KANDAKORAN,
AGED 69 YEARS,AMARAVATHI,PALLIKARA,
NEELESWARAM P.O.,HOSDURG TALUK,
KASARGODE DISTRICT,PIN-671314.

2. K.SURENDRAN,AGED 44 YEARS,
S/O.KUNHIRAMAN,P.V.HOUSE,
THALIPADUPPU,ADUKATH BAYAL VILLAGE,
KASARGODE,PIN-671121.

3. ABDUL SALAM N.U, AGED 44 YEARS,
S/O.UMMER MAULAVI N.A,'NIBRAS',
NAYYANARMARMOOLA,ALAMPADI P.O.,
KASARGODE,PIN-671113.

4. AMBALATHARA KUNHIKRISHNAN,AGED 61 YEARS,
S/O.KARIYAN,MARUTHOTTU,MEEGOTH,
PULOOR P.O.,KASARGODE DISTRICT,PIN-671531.

5. MANOHARAN.K,AGED 38 YEARS,R.D.NILAYAM,
CHUTTUVAM,PUTHUKAI P.O.,KANGHANKAD,
KASARGODE DISTRICT,PIN-671314.

6. ADV.BASHEER ALADI,AGED 40 YEARS,
S/O.HASSAINAR,4/64A,PARA AHAMMED MANZIL,
PANAYAL P.O..HOSDURG TALUK,
KASARGODE DISTRICT,PIN-671318.

7. K.K.ASHOKAN,AGED 39 YEARS,S/O.MADHAV,
KARIPADAKOM HOUSE,KAPPITHOTTAM,
PANATHADI P.O.,RAJAPURAM,PIN-671532,
KASARGODE DISTRICT.

8. GOTHRAMOOPPAN NELLIKKADAN KANNAN,
AGED 75 YEARS,S/O.KAVIRI,NELLIKKADAN HOUSE,
CHEERKAYAM,NATTAKKAL P.O.,KASARGODE DISTRICT,
PIN-671533.

9. P.K.RAMAN,AGED 54 YEARS,S/O.KARIYAN,
MUNDOTTU VEEDU,RAJAPURAM,
KASARGODE DISTRICT,PIN-671532.

10. KARUNAKARAN PAYANGAPPADA,
AGED 56,S/O.P.KELU,NELLIADUKKAM KATTIPOIL P.O.,
KASARGODE,PIN-671314.

11. ABOOBACKER SIDDIQUE,AGED 33 YEARS,
S/O.BATTUVANKUNJHI,DEEP MAZHAL,
CHERAKKAI KADAPURAM,KUDLU P.O.,
KASARGODE DISTRICT,PIN-671124.

12. KARUNAKARAN KALIPURAYIL,AGED 61 YEARS,
S/O.CHANDHU,KALIPURAYIL HOUSE,
KURIKILAD P.O.,VADAKARA,KOZHIKODE DISTRICT,
PIN-673104.

13. ABBAS MUTHALAPPARA,AGED 56 YEARS, S/O.SAINUDHEEN,MUTHALAPARA HOUSE,
BOVIKANAM,POST MULIYAR,KASARGODE DISTRICT, PIN-671542.

R1 BY SRI.M.K.DAMODARAN (SENIOR ADVOCATE.)

ADVS.SRI.M.SASINDRAN

SRI.GILBERT GEORGE CORREYA

SRI.V.VENUGOPAL

SRI.A.ARUNKUMAR

R6 BY ADV.SRI.B.N.SHIVSANKAR

R13 BY ADV.SRI.K.SHIBILI NAHA

THIS ELECTION PETITION HAVING BEEN FINALLY HEARD ON 02.03.2015
THE COURT ON 10-04-2015,DELIVERED THE FOLLOWING:

B.KEMAL PASHA, J.

.....

Election Petition No.3 of 2014

.....

Dated this the 10th day of April, 2015

JUDGMENT

The petitioner, who has contested as a candidate for the election from 1-Kasaragode Parliamentary Constituency in the Parliament Election conducted on 10.04.2014, has come up under Sections 80, 80A, 84 and 100 of the Representation of the People Act, 1951(hereinafter referred to as 'the Act'), for getting the election of the first respondent from the said constituency in the said election and the results declared on 16.05.2014 set aside, and also for declaring the petitioner as the returned candidate from the said constituency in the said election.

2. In the aforesaid election from the said constituency, respondents 2 to 13 are the other candidates, over and above the petitioner and the first respondent. The votes cast in the election were counted on 16.05.2014 and the first respondent was declared elected by a margin of 6,921 votes more than the petitioner.

3. The petitioner was a candidate of the Indian National Congress(hereinafter referred to as 'INC') and the first respondent was a candidate of the Communist Party of India(Marxist)[hereinafter referred to as CPI(M)]. The 2nd respondent was a candidate of the Bharathiya Janata Party, the 3rd respondent was a candidate of Social Democratic Party of India(SDPI), the 4th respondent was a candidate of Aam Admi Party(APP), the 6th respondent was a candidate of Bahujan Samaj Party(BSP) and the 13th respondent was a candidate of All India Trinamool Congress. All the others were independent candidates. According to the petitioner, the election of the first respondent from the constituency was vitiated by various corrupt practices coming within the purview of Section 123 of the Act.

4. Polling Station No.4 of 4-Kanhangad Assembly Constituency, which forms part of the above parliamentary constituency, was at the Government High School, Ravaneswaram, where one Sri.S. Ganapathi Bhatt working as HSA , GVHSS Mulleria, Kasaragod was the Presiding Officer. He is an active member of the National Teachers' Union which owes political allegiance to Bharathiya Janata Party. According to the petitioner, in the last parliament election, the main contest throughout India was between Indian National Congress and Bharathiya Janata Party. The political agenda of BJP, as far as Kerala was concerned, was that even if a CPI(M) nominee wins the election, by no stretch an INC nominee should be allowed to win. In all constituencies where BJP thought that they have no chance to win the election, they preferred a CPI(M) nominee to a INC nominee. According to the petitioner, Kasaragod was one such constituency and therefore, the interest of Sri.Ganapathy Bhatt was against the petitioner. It is also alleged that Sri.P.N. Sathyan, who was a polling officer in that booth was an active worker and sympathiser of CPI(M). Another polling officer Sri.Ragesh Theerthamkara is also closely associated with the activities of NGO Union, an association owing political allegiance to CPI(M). It is alleged that the other two polling officers namely Jose Civijan and K.V. Vijayan were also closely associated with the activities of NGO Union. All the said officers in charge of that polling station were interested in the first respondent winning the election. The voting process underwent in the above booth was an apology to democratic system of election and voting. The polling officers never insisted for production of proper identity cards by the voters, and many voters were allowed to vote even without marking with ink on their fingers. The CPI(M) workers were allowed to cast their votes twice and thrice. Votes in the names of voters who were not available in the station were allowed to be cast freely by others. Instances are there where one voter cast at least eight votes without any objection from the polling

officers. Even though, polling agent of the petitioner Sri.Anish Kumar raised objection, the Presiding Officer and the polling officers, did not take care of the objection. On various occasions when such fake votes were cast, the direction of the video camera installed by the Election Commission was diverted from that area. The video footage will clearly reveal that all the above said officers were actively assisting the first respondent to further his prospects in the election. The same was done by the said officers with the full knowledge and consent of the first respondent and his election agent.

5. Polling Station number 37 of 4-Kanhangad Assembly Constituency, forming part of above said parliamentary constituency was at Malappachery GLPS. According to the petitioner, in the said booth also, the polling officers actively assisted the 1st respondent to further the prospects of his election. One Josekutty E.P., teacher at St.Thomas High School, Thomapuram was the presiding officer at that booth. Saji James K, who works as teacher at St. Marys High School, Kadumeni, Rajan P., working as Teacher at Technical High School Cheruvathoor, Shabu M.A. working at Central University of Kerala, Kasaragod and Smitesh K.V., a teacher of AUPS Puthilot were the officers who were in charge of the above booth. The aforesaid Mr.Rajan and Mr.Smitesh are active workers of CPI(M). All the said officers of the said both were freely allowing CPI(M) workers to cast votes on several occasions. There were instances of one man exercising votes, on several occasions. The polling agent of the petitioner was not even allowed to enter the booth. The fact that CPI(M) workers were allowed to cast votes freely in the above booth was intimated to the petitioner by the residents in that area including C. Raghavan Nair, who resides close to the polling booth. The said acts were done by the officers in charge of the booth, with the knowledge and consent of the first respondent and his election agent. The first respondent obtained and procured the assistance of the said officers to further the prospects of his election.

6. Polling Station number 157 of 3– Udma Assembly Constituency, forming part of the above said parliamentary constituency was at Kuttikol AUP School. This booth was already declared as a sensitive booth by the Election Commission. The agents of the 1st respondent, namely Sri.Mohammed Kunju and Mr. Raju in company with the polling officers, engaged in corrupt practices, and manipulated the voting procedure, to further the prospects of the election of the 1st respondent. The booth agents of the petitioner, namely Sri.Thampan Chittappankundu and Sri. Mohan Kodakuzhy kuttikol has informed the petitioner that bogus votes were cast rampantly in the booth. Repeated attempts by the agents of the petitioner to stop corrupt practice was disregarded by the polling officers. Further, enquiry by the petitioner reveals that the 1st respondent and his sponsoring party had actively colluded with the polling agents who are active workers of CPI(M). According to the petitioner, the presiding officer of the booth Mr.Sajith M, who is employed as Assistant Engineer, National Highway Section, Kasaragod is an active CPI(M) worker. The other polling officer, Mr.Chandran K who is employed as PD Teacher in GHS Uppilikkai, Kasaragod is an active member of Kerala State Teachers Association owing allegiance to CPI(M). Sri.Sugathakumar Kunnaruvath working as Junior Health Inspector, Primary Health Centre Karindalam, is a member and active worker of NGO Union, owing allegiance to CPI(M). According to the petitioner, the 1st respondent has obtained and procured the assistance of the said officials in charge of voting in the above polling station to further the prospects of the 1st respondent and it was with the knowledge and consent of the 1st respondent, that those officials had engaged in the corrupt practice.

7. Polling Station number 21 of 7- Kalliasseri Assembly Constituency, forming part of above said parliamentary constituency was at Mandoor ALP School, Thekkubhagom. In that polling station, numerous bogus votes were polled with the assistance of polling officials. Even though the UDF booth agent, on numerous occasions, objected to the casting of bogus votes, his objections were not at all considered. Serial No.436 in the voters list of that polling station, is Sri.Anoop K.V., S/o Padmanabhan, who was in Pune on the date of election. His vote was cast, in spite of objection from the booth agent of the petitioner. Serial No.539 Sri. K.V. Sivadasan was in Bahrain on the date of election and Serial No.865 Sri Nithul Padmanabhan was in UAE on the date of election. Their votes were cast overlooking the objections from the booth agent of the petitioner. Open vote of a 19 year old boy by name Ashif M.C. with Serial No.1008 was cast by Mr. Padmanabhan P.V., S/o Kelan who is an active CPI(M) worker. Sri.Madhusoodhanan V.V. working as teacher in Government Higher Secondary School, Korom, who was the presiding officer of the booth and Sri. Ganeshan T.V. teacher of Government Higher Secondary School Vellur, who was one of the polling officers in the said booth are active CPI(M) workers. Other polling officials namely Mr.Pradeep Kumar K and Sri.Radakrishnan K are also active workers of CPI (M). According to the petitioner, it was with the knowledge and consent of the first respondent that the above polling officials permitted the commission of corrupt practices under Section 123(7) and 123(8) of the Act, to further the prospects of the first respondent.

8. According to the petitioner, the above instances will conclusively show that the 1st respondent has committed corrupt practice coming under Section 123 (7) of the Act. It is the case of the petitioner that the above booths were practically captured by CPI(M) workers. The action of CPI (M) workers in those two booths amounts to booth capturing under Section 123(8) of the Act. Such instances had occurred in various booths throughout the constituency, especially in assembly segments of Kalyassery, Payyannur, Kanghangad and Thrikarippur. The above said booths are specifically mentioned since the incidents in the above booths can be proved before this Court through video footage from the Election Commission of India. Soon after the election, the election agent of the petitioner had filed a complaint before the Returning Officer. In many of the booths, the polling agents of the petitioner were not allowed to enter the polling booth. In some booths, polling agents of the petitioner, who were inside the booth, were sent out using muscle power.

9. According to the petitioner, for the above said reasons, the election of the first respondent, from the said

parliamentary constituency, is liable to be set aside.

The first respondent has filed a detailed written statement denying the averments and allegations contained in the election petition. Along with the written statement, the first respondent has filed I.A.No.21 of 2014 seeking the dismissal of the election petition at the threshold. The said IA was filed under Sections 83 and 86 of the Act read with Section 151 of the Code of Civil Procedure and Order VI Rule 16 and Order VII Rule 11 of CPC. According to the first respondent, the petitioner has violated the mandates of Section 83(1) of the Act and has failed to plead material facts and also has failed to set forth the full particulars of any corrupt practice. According to the first respondent, the pleadings resorted to by the petitioner are vague and therefore, the same are liable to be struck off. It is also contended that for want of sufficient pleadings, the petitioner has failed to make out any cause of action. The allegations contained in paragraphs 4 to 7 that the Presiding Officer and the Polling Officers at the 4 Polling Stations mentioned therein had either interest against the petitioner or are sympathisers of CPI(M) and therefore they have allowed voters freely to cast votes, are some inferences by the petitioner, and no material particulars as required under Section 83(1) of the Act is pleaded to establish such allegations. There is no such allegation that all such persons have voted in favour of the first respondent. There is also no allegation that even a single voter was denied his vote even though an allegation of booth capturing is raised. The particulars as to the booths, the person, place, date or time, mandatorily required under Section 83(1)(b) of the Act are not set forth. Over and above all these, it has to be noted that the votes polled at all the four Polling Stations amount to 4341 only, whereas the first respondent has got a majority of 6921 votes.

11. Even where the entire votes of the 4 disputed Polling Stations amounting to 4341 are excluded, the first respondent will have a majority of 2580 votes over the election petitioner.

12. According to the first respondent, the petitioner has not mentioned, suggested or referred or substantiated the grounds under Section 100 of the Act to set aside the election of the first respondent and therefore, relief (a) is not sustainable. The petitioner has never pleaded with material facts and particulars to substantiate that the petitioner has received a majority of valid votes or that, but for the votes obtained by the first respondent by corrupt practice, the petitioner would have obtained a majority of the valid votes. Therefore, relief (b) is also not sustainable.

13. It is also contended that the affidavit filed by the petitioner is not proper and not in conformity with Section 83 of the Act and Rule 94-A of the Conduct of Election Rules 1961 and not in Form No.25. As there is violation of the mandates of Section 83(1) of the Act, the election petition does not raise a triable issue. The election petition has to be dismissed at the threshold or the same is liable to be rejected under Order VII Rule 11 CPC.

14. Heard the learned Senior Counsel Sri.Krishnanunni for the election petitioner and the learned Senior Counsel Sri.M.K. Damodaran for the first respondent.

15. The learned Senior Counsel Sri.M.K. Damodaran has argued that the election petition is in gross violation of the provisions contained under Section 83(1)(a) and 83(1) (b) of the Act and therefore, it does not bring out any cause of action at all and in such case the election petition as such is liable to be rejected under Order VII Rule 11 CPC. It is also argued that, the petitioner has not specified as to whether he has resorted to the grounds under Section 100 (1)(b) or Section 100(1)(d) of the Act. It is also argued that the petitioner has not pleaded material facts and full particulars that the first respondent or his agent or any other person with the consent of the first respondent or his election agent, has obtained or procured or obtained or attempted to obtain or procure, any assistance for the furtherance of the prospects of the first respondent in the election, from any person belonging to any of the classes (a) to (h) of Section 123(7) of the Act. It is also argued that there are no sufficient pleadings for bringing out "booth capturing" within the meaning of explanation to Section 135A of the Act.

16. It is also argued that if at all the Government officers who were the officers at the polling booths have any political allegiance, the first respondent cannot be found fault with in their political allegiance, if any, and that the liability of any acts done by them cannot be thrust upon the first respondent, unless and until it is shown that those acts were done with the knowledge and consent of the first respondent or as canvassed by him. The argument is that, apart from some illegitimate inferences, the petitioner has no specific case as to how the first respondent had allegedly prevailed upon the said Government officers in any manner. It is further argued that any specific pleadings to that effect are not there in the election petition, and therefore, the election petition is liable to be summarily dismissed.

17. *Per contra*, the learned Senior Counsel for the petitioner, Sri.Krishnanunni has argued that there are specific allegations of corrupt practice made out in detail in paragraphs 4, 5, 6 and 7 of the Election Petition and the said paragraphs contain all material facts and full particulars of the corrupt practice committed by the first respondent. If at all there is any deficiency in the affidavit in support of the election petition, that can be cured at any time as and when such deficiencies are pointed out.

18. It is also argued that matters which are to be proved through evidence cannot be expected to be proved at the time of the filing of the Election Petition and that, by inferring that it may not be possible for the petitioner to prove such matters in evidence, an election petition cannot be thrown out at the threshold. According to the learned Senior Counsel for the petitioner, all matters which are required to be pleaded have been pleaded in the Election Petition by giving material facts and full particulars.

19. It seems that the petitioner has relied on Sections 100(1)(b) and 100(1)(d)(ii) of the Act for getting the election of the first respondent being the returned candidate to be void on the ground that it is vitiated by corrupt practice. Section 100(1)(b) deals with case wherein *"any corrupt practice has been committed by a returned candidate or his election agent"*. It says that such a corrupt practice should be committed by the returned candidate, or the election agent of the returned candidate or by any other person with the consent of the returned candidate or his election agent. The corrupt practices alleged in this case are the one under Section 123(7) and one under Section 123(8) of the Act.

20. As per Section 123(7) of the Act the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person(with the consent of a candidate or his election agent), any assistance(other than the giving of vote) for the furtherance of the prospects of that candidate's election,(from any person whether or not in the service of the Government) and belonging to any of the classes mentioned therein as (a) to (h), is a corrupt practice.

21. Section 100(1)(d)(ii) says: If the High Court is of the opinion *"that the result of the election, in so far as it concerns a returned candidate, has been materially affected by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent"*, the election of the returned candidate can be declared to be void.

22. There is no dispute that those persons whose names are mentioned as polling officials at the booth are not Government servants coming under the said Section. Section 123(8) deals with "booth capturing" by a candidate or his agent or other person as a corrupt practice. As per Explanation (4) to S.123(8), "booth capturing" for the purpose of clause (8) shall have the same meaning as in Section 135A.

23. Section 135A reads:

> "Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which [shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine].
>
> **Explanation.-** For the purposes of [this sub-section and section 20B], "booth capturing" includes, among other things, all or any of the following activities, namely:-
>
> (a) seizure of a polling station or a place fixed for the poll by any person or persons, making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;
>
> (b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and [prevent others from free exercise of their right to vote];
>
> (c) [coercing or intimidating or threatening directly or indirectly] any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;
>
> (d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;
>
> (e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.]
>
> [(2) An offence punishable under sub-section (1) shall be cognizable.]"

24. In paragraphs 4 to 7 of the election petition it has been pleaded that the officers who were manning the said polling booths were persons owing allegiance to CPI(M) and that they have favoured the first respondent. What has been pleaded is that even without any proper identification, CPI(M) workers were allowed to cast votes freely, that too repeatedly. In those paragraphs it has not been pleaded that any of the voters were obstructed or restrained from exercising their franchise. At the same time, in paragraph 9 one sentence as follows has been incorporated. "Many of the genuine voters were not allowed to cast their votes." Apart from that vague allegation, I do not find any specific pleadings in the election petition with regard to the corrupt practice of "booth capturing". There is no allegation that there was any attempt from anybody on the polling authorities to surrender ballot papers or voting machines. Therefore, clause (a) of Section 135A(1) has no application. There is no pleading with regard to Section 135A(1)(b) also. The stray sentence noted in paragraph 9 might have been incorporated for bringing out an instance of "booth capturing" within the meaning of Section 135A(i)(c). At the same time, there is no specific pleading to show as to the identify of the person or persons who were prevented from going to the polling station or from casting their votes. There is nothing to bring out the instance mentioned under Section 135A(1)(d) also. It seems that the petitioner is harping upon 135A(i)(e) which

states "*doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate*." At the same time, apart from the stray sentence incorporated in paragraph 9 of the election petition that many of the genuine voters were not allowed to cast their votes, there is no specific allegation that either the first respondent or his election agent or any of the Government officials who were in charge of the polling booths had prevented any person from going to the polling station or from casting his vote. Matters being so, much discussion is not required to conclude that there are no specific pleadings at all with regard to corrupt practice captioning "booth capturing".

25. The learned Senior Counsel for the first respondent has pointed out that apart from reproducing the principles of law contained in Section 123(7) of the Act, that the the first respondent has procured and obtained the assistance of Government officers, such assistance was procured and obtained with the knowledge and consent of the first respondent for the furtherance of the prospectus of the first respondent's election, any fact specifically pointing out such a situation has not been pleaded at all. In short, the argument is that the pleadings resorted to as an attempt to bring out corrupt practice under Section 123(7) of the Act are merely the reproduction of the law contained in the provision and that any fact for bringing out the said legal provision has not been pleaded. Therefore, according to the learned Senior Counsel for the first respondent, material facts have not been incorporated in the election petition. It is also argued that the election petition is grossly defective as it does not contain such material facts and the full particulars with regard to the corrupt practice allegedly committed.

26. The learned Senior Counsel for the first respondent is relying on the decision in ***Hardwari Lal v.Kanwal Singh*** **[AIR 1972 SC 515]** wherein it was held in paragraphs 16, 17, 18 and 19 as follows**:**

> *"16. Section 123 (7) of the Act is as follows :-*
>
> *"The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government and belonging to any of the following classes, namely.*
>
> *Clauses (a) to (g) which need not be set out here."*
>
> *It has to be noticed that the different expressions obtaining, procuring, abetting or attempting to obtain or procure are various forms of corrupt practices. It has to be found as to whether the allegation of obtaining assistance amounts to an allegation of fact. It is well settled that general expressions like 'fraudulently', 'negligently' or 'maliciously' in pleadings do not amount to any allegation of fact. A fact is after all not a mere word.*
>
> *17. The provisions of the aforesaid section indicate these heads of corrupt practice. First, the obtaining by a candidate or his agent or by any other giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government as mentioned in the Section. Second, the procuring by a candidate or his agent or by any other person with the consent of the election petitioner any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election. Third the abetting by a candidate or his agent or by an other person with the consent of the candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election as mentioned. Fourth, the attempting to obtain or procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election Fifth, the assistance that is forbidden or prohibited by the statute is any assistance other than the giving of vote. It is clear that the four different heads of corrupt practices are (a) obtaining, (b) procuring, (c) abetting and (d) attempting to obtain or procure assistance.*
>
> *18. Therefore material facts are to be alleged as to whether the candidate obtained or procured or abetted or attempted to obtain or procure any assistance other than the giving of vote. In Paragraph 16 of the election petition it is alleged that the appellant committed the corrupt practice of obtaining and procuring or attempting to obtain and procure assistance for the furtherance of the prospects of his election from the persons mentioned there. Reading Paragraph 16 of the election petition one will search in vain to find out as to whether the allegations against the appellant are in regard to the assistance under both heads or either head from each of the six persons mentioned there. One will speculate as to whether the appellant obtained and procured or attempted to obtain and procure assistance from each or some of the persons mentioned there Obtaining or procuring or attempting to obtain or procure assistance are separate and independent forms of corrupt practice. One*

will guess as to whether the allegations are that the appellant committed all or one or more of the corrupt practices of obtaining, procuring, attempting to obtain or procure assistance from each of the persons mentioned there. One will also conjecture and hazard as to what assistance was to obtained or procured or attempted to obtain or procure from each of the persons mentioned there, for the furtherance of the prospects of that candidate's election. The giving of vote is not within the mischief of corrupt practice. It cannot be understood from the petitioner whether the giving of vote is the assistance alleged. It is, therefore, apparent that the appellant who was charged by the election petitioner with corrupt practice should be told in the election petition as to what assistance he sought. The type of assistance, the manner of assistance, the time of assistance, the person from whom assistance is sought are all to be set out in the petition. There is no allegation in the petition about the actual and the specific assistance with which the appellant can be charged in violation of the provisions of the Act. Nor is there any statement in the election petition describing the manner in which the prospects of the election were furthered and the way in which the assistance was rendered. The allegations against the appellant were in relation to six persons. Therefore, it was essential and imperative for the election petitioner to set out with exactitude and precision the type of assistance as also the manner in which assistance was obtained or procured from each person. The time, the date and the place of the assistance were also required to be set out in the particulars Thus it had to be alleged as the material facts as to what assistance the appellant obtained or procured or abetted or attempted to obtain or procure from which person and how the assistance furthered the prospects of the appellant's election. If all the four variants and ingredients were to be charged against the appellant these had to be set out as statements of material facts in relation to each person.

19. The requirements in an election petition as to material facts and the consequences of lack of such allegation of material facts came up for consideration in this Court in the recent decision in Samant N. Balakrishnan v. Goorge Fernandes, (1969) 3 SCR 603 = (AIR 1969 SC 1201). In that case reference was made to Section 81. 83 and 86 of the Act as the procedure provisions of election petition. Sec. 81 deals with presentation of petitions. Sec. 83 deals with contents of petitions. Section 86 deals with trial of petitions. Hidayatullah, C. J. speaking for the Court laid down these propositions. First, Section 83 of the Act is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. Second, omission of a single material fact leads to an incomplete material fact leads to an incomplete cause of action and the statement of claim becomes bad. Third, the function of particulars is to present in full a picture of the cause of action to make the opposite party understand the case he will have to meet. Fourth, material facts and particulars are distinct matters. Material facts will mention statements of fact and particulars will set out the names of persons with set out the names of persons with the date, time and place. Fifth, material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Sixth, in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost. The fact which constitutes a corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Seventh, an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the obtaining or procuring of assistance unless the each type and form of assistance and the person from whom it is sought and the manner in which the assistance is to further the prospects of the election are alleged as statements of facts."(Emphasis supplied)

27. In ***Smt. Indira Nehru Gandhi v. Raj Narain*****[AIR 1975 SC 2299]** it was held in paragraphs 404 and 406 as follows:

"*It is clear that "the obtaining or procuring or abetting or attempting to obtain or procure" had to take place either by a candidate or by his agent or by somebody "with the consent of the candidate or his election agent". Until the candidate had appointed an election agent, the action of any other person could not constitute him automatically an agent so that he may by doing something voluntarily, succeed in making the candidate vicariously liable for his own actions whether he was or was not a gazetted officer a the time when he committed the act complained of. The question of obtaining assistance through "an agent" or "other person with the consent of a candidate or his election agent" could only arise where such a case of obtaining assistance indirectly through others is set up bu not otherwise."*

"The law must lay down a duty to prevent, by taking some steps which are not taken, before a person is held liable for an omission. And, there is a difference between omission to prevent the doing of something and actual consent to the doing of it. I do not find, in the petition, any case of a liability from omissions to do something set up, obviously because the law does not impose upon the candidate the duty to prevent the giving of voluntary assistance by others whether officials or not. Nor is there anywhere in the petition a case of procurement by consenting to aid obtained through others. It has to be remembered that on the language of Section 123(7), a liability is not created by merely not rejecting voluntarily given aid. The candidate may not often be aware of the voluntarily given assistance so as to be able to reject it. A case of consent can be legally set up is only one of consenting to active obtaining or procurement by an agent or by some other person who becomes, for the purposes of the specific aid given and consented to, ordinarily prior to obtaining it, as good as an agent employed by the candidate".

28. The learned Senior Counsel for the first respondent has relied on the decision in ***Ashar Hussain v. Rajiv Gandhi*[AIR 1986 SC 1253]** to fortify his argument that material facts and full particulars have not been pleaded by the petitioner. The said decision has been rendered by relying on the decision reported in ***AIR 1972 SC 515***, noted *supra.* In paragraph 14 of ***Azhar Hussain***(*supra)* it was held:

"Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression 'material facts and particulars, which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

(1) What are material facts and particulars? Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. [(1969) 3 SCR 217 : (AIR 1969 SC 734) - Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi].

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a Government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded : [(1972) 2 SCR 742: (AIR 1972 SC 515) - Hardwari Lal v. Kanwal Singh].

a) mode of assistance;

b) measure of assistance; and

c) all various forms of facts pertaining to the assistance.

(3)In the context of an allegation as regards procuring, obtaining abetting or attempting to obtain or procure the assistance of Government servants in election it is absolutely essential to plead the following :

(a) kind or form of assistance obtained or procured;

(b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election. [AIR 1972 SC 515]

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured [AIR 1972 SC 515].

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the way in which the assistance was rendered. (AIR 1972 SC 515) (supra)

(6) The election petitioner. must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in. the particulars. (AIR 1972 SC 515) *(supra)."*

29. In paragraph 18 of **Azhar Hussain**(*supra)* it was held:

"The averments contained in paragraph 4 pertaining to Ground No. 1 do not satisfy the test

prescribed in Manubhai Amarsey v. PopatIal Manilal Joshi (AIR 1969 SC 734) and Hardwari Lal v. Kanwal Singh (AIR 1972 SC 515) (supra). The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election candidate for promoting the prospects of his election. All that has been stated is :

"His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election ....."

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these "essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded" as per the law laid down in Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi (AIR 1969 SC 734) (supra) it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars the Courts could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a Government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the Government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent. The averments made in the petition do not show (i) who had obtained or procured the assistance from Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action. The High Court was therefore, perfectly justified in reaching this conclusion. The petition also does not disclose the exact words used in the speech; or the time and date of making such a speech. Now, unless the relevant or offending passage from the speech is quoted, it cannot be said what exactly Shri Beg had said, and in what context, and whether it was calculated to promote the election prospects of the respondent. Be that as it may, inasmuch as these material facts and particulars to show that the services of Shri Beg were procured by some one with the consent of the respondent or his election agent are not there, the averments pertaining to the charge do not disclose a cause of action. Unless the nexus between the appearance of Shri Beg on the media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a cause of action and the test laid down in Manubhai Nandlal's case, as also Hardwari Lal's case is satisfied."

30. In ***Lalit Kishore Chaturvedi v. Jagdish Prasad Thada and others*****[1990 (Supp) SCC 248]** it was held in paragraph 6 as follows:

"An election petition filed under Section 81 is required by Section 83(1) to contain concise statement of the material facts on which petitioner relies. And clause(b) further mandates a petition to set forth particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date of commission of each such practice. Importance of material facts and the distinction between material facts and particulars were brought out in Manubhai Nandlal Amersey v. Popat Lal Manilal Joshi [(1969) 1 SCC 372]. Consequence of lack of such allegations of material facts were considered in Samant N. Balkrishna v. George Fernandes[(1969) 3 SCC 238]. In Hardwari Lal case it was held that (SCC p.220, para 20) "an election petition has the effect of declaring an election void. It is a serious remedy. It is, therefore, vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges." All these decisions were analysed in detail in Azhar Hussain v. Rajiv Gandhi and it was held that the settled principle of law, as it emerged from numerous decisions of this Court in regard to the question as to what exactly was the content of expression 'material facts and particulars' which the election petitioner should incorporate in petition by virtue of Section 83(1): (SCC p.327, para 14)

"Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition."

31. In ***Ramachandran Kadanappalli v. K.P. Noordeen[AIR 1988 Kerala 141]*** it was held in paragraph 21 as follows:

"For all corrupt practices, if they are not by the candidate or his election agent, their consent is an essential ingredient. It is the vital link that connects the returned candidate with the corrupt practice. In order to constitute corrupt practice coming under Section 123(7) it is not enough to show that somebody did it. Obtaining or procuring by the returned candidate or his election agent or if by any another person it was with the consent of either of them must be alleged and proved. Who obtained or procured the assistance, how it was obtained or procured, how it was said that it was with the consent of the candidate or his election agent, when and where it was procured, what was the assistance and how and in what manner it was in furtherance of the election prospects are all details to be alleged. Without such particulars the cause of action will not be complete. 1986 (Supp) SCC 315:(AIR 1986 SC 1253). Many persons interested in a candidate may resort to canvassing by corrupt practices on behalf of the candidate without his knowledge or consent. The responsibility of the candidate or the election agent in that respect will have to be established before penalising him."

32. In paragraph 24 it was held:

"Judged in the light of these principles what I was able to notice from the allegations in the petition is that the petitioner is not having any concrete material facts constituting any cause of action and he is not aware of any material particulars also. Somehow or other in a fortune hunting he wants to fish out materials by evidence on the basis of vague and incomplete whimsical causes of action in his anxiety to see that the election is set aside. Such an attempt is not allowed by law. Those who approach the court with concrete and complete facts constituting causes of action coming within the provisions of Sections 100 (1), 101 and 123 and supported by the fullest particulars alone are entitled to engage the precious time of the court in a trial to set at naught the results of election held with all precautions and heavy State expense. At any stage including the stage at which the petition is filed the court is entitled to shut its doors to others. Even though dismissal of a petition is not provided under S.86 for non-compliance of S.83, S.87 taken along with O.6, R.16 and O.7, R.11 CPC makes it not only the right but the imperative duty of the court to strike out such pleadings and reject the petition itself if no further cause of action remains."

33. In Shivajirao B. Patil Kawekar v. Vilasrao D. Deshmukh[(2000) 1 SCC 398], the three Judges Bench of the Apex Court held that in the case of pleadings, it would not suffice to merely repeat the language of the statutory provision in the pleadings; material facts have to be pleaded. It was held that general averments suffering from sufficiency of requisite pleading of all the constituent parts of the corrupt practice would not constitute a pleading of the full cause of action and shall have to be ignored and struck out in accordance with Order VI Rule 16 CPC.

34. In Kamalnath v. Sudesh Verma[(2002) 2 SCC 410] it was held in paragraph 5:

"In Ravindra Singh's case[(2000) 8 SCC 191] this Court, construed the provision of S. 83 of the Act and held that not only a concise statement of material facts and full particulars of the alleged corrupt practice to present a full and complete picture of the action to be detailed in the election petition, but also under the proviso to S. 83(1) of the Act, the election petition levelling a charge of corrupt *practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. According to learned Judges the reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise."*

35. In ***Hari Shanker Jain v. Sonia Gandhi[*** **(2001) 8 SCC 233**] the three Judges Bench of the Apex Court has held in paragraph 23 as follows:

"Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can

be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. See Samant N. Balakrishna, etc. v. George Fernandez, (1969) 3 SCR 603; Jitender Bahadur Singh v. Krishna Behari, (1969) 2 SCC 433. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V. S. Achuthanandan v. P. J. Francis, (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition."

It was further held therein that it is the duty of the court to examine the petition irrespective of any written statement or denial, and reject the petition if it does not disclose a cause of action; for the same, it should look at the plaint and nothing else. It was held that courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

36. Relying on the decision reported in ***AIR 1972 SC 515***(*supra),* it was held in ***Dhartipakar Madan Lal Agarwal v. Shri. Rajiv Gandhi[AIR 1987 SC 1577]*** as follows:

"A corrupt practice as contemplated by S. 123

(7) contemplates obtaining or procuring by a candidate or his election agent, assistance from the Government servants belonging to the classes specified in sub-s. (7) of S. 123 for the furtherance of the prospect of the candidates election. In order to constitute a corrupt practice under S. 123(7), it is essential to clothe the petition with a cause of action which: would call for an answer from the returned candidate and it should therefore plead mode of assistance, measure of assistance and all facts pertaining to the assistance. The pleading should further indicate the kind or form of assistance obtained and in what manner the assistance was obtained or procured or attempted to be procured by the candidate for promoting the prospect for his election. The election petitioner must state with exactness the time of assistance, the manner of assistance and the persons from whom assistance was obtained or procured by the candidate as held by this Court in Hardwari Lal v. Kanwal Singh, (1972) 2 SCR 742: (AIR 1972 SC 515) and Azhar Hussain v. Rajiv Gandhi, (AIR 1986 SC 1253)."

37. The learned Senior Counsel for the petitioner has relied on the decision in ***Raj Narain v. Smt. Indira Nehru Gandhi*****[AIR 1972 SC 1302]** in which the decision in Hardwari Lal's case(AIR 1972 SC 515)(*supra*) was followed. In Hardwari Lal's case, apart from mentioning the names and addresses of the persons who were in the service of Government, whose services were allegedly procured by the candidate, it was pleaded that the candidate had written letters under his own signatures to the said Government servants seeking their help and assistance in furthering the prospectus of his election. Even then, in Hardwari Lal's case(*supra),* it was held that material facts and full particulars were not pleaded.

38. In ***Raj Narain v. Smt. Indira Nehru Gandhi*****[AIR 1972 SC 1302]**(*supra)* it was held that in Hardwari Lal's case, the petitioner therein had merely quoted the relevant provision of law, and he had failed to state the material facts to bring out the charge sought to be levelled, and that he had cast a wide net. The decision in Hardwari Lal's case was distinguished in Raj Narain's case by stating that in Raj Narain's case all the ingredients of the corrupt practices viz.

(1) that the respondent obtained the assistance of Kapur; (2) Kapur was a Government servant and (3) His services were obtained in support of the candidature of the respondent by organising her election campaign, are mentioned in the petition.

39. The learned Senior Counsel for the petitioner has relied on the decision in ***H.D.Revanna v. Puttaswamy Gowda and others*****[AIR 1999 SC 768]** wherein it was held in paragraph 23 as follows:

"This Court has repeatedly pointed out the distinction between 'material facts' and 'particulars'. In so far as 'material facts' are concerned, this Court has held that they should be fully set out in the Election Petition and if any fact is not set out, the petitioner

cannot be permitted to adduce the evidence relating thereto later; nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an Election Petition. As regards particulars, the consistent view expressed by this Court, is that the petition cannot be dismissed in limine for want of particulars and if the Court finds that particulars are necessary, an opportunity should be given to the petitioner to amend the petition and include the particulars. The Constitution Bench in Balwan Singh v. Shri Lakshmi Narain, (1960) 3 SCR 91 : (AIR 1960 SC 770) held that an election petition was not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the Tribunal was of the view that particulars had not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out."

40. The said decision is rendered by a two Judges Bench.Based on the decision noted *supra*, and the decisions reported in ***G.M. Siddeshwar v. Prasannakumar*** **[I (2013) CLT 296(SC)]**, ***Neena Vikram Verma v. Balmukund Singh Gautem and others*****[II (2013) CLT 258 (SC)]** and ***C.P. John v. Babu M. Palissery*****[(2014) 10 SCC 547]** and ***L.R.Shivaramagowda etc. v. T.M. Chandrashekar etc***.**[1999 SAR(Civil) 99]**, the learned Senior Counsel for the petitioner has argued that even when a case wherein full particulars are not mentioned with regard to the corrupt practice alleged in the election petition, an election petition cannot be dismissed at the threshold; whereas, it could be dismissed only when the petitioner is not availing an opportunity that should be granted to the petitioner to furnish the full particulars.

41. At the same time, it is trite that, as regards 'material facts', it has to be noted that the petitioner is not entitled to get an opportunity to incorporate those material fats by way of an amendment in the election petition after the period of limitation for filing the election petition as such.

42. In ***Raj Narain v. Smt. Indira Nehru Gandhi*****[AIR 1972 SC 1302]**(*supra)* by relying on the decision in Hardwari Lal's case noted *supra, the Apex Court* held that the facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action and in other words the facts must bring out all the ingredients of the corrupt practice alleged. It has been held that if the facts stated fail to satisfy that requirement, then they do not give rise to a triable issue, and such a defect cannot be cured by any amendment after the period of limitation for filing the election petition.

43. The learned Senior Counsel for the petitioner has invited the attention of this Court to the decisions in ***Nandiesha Reddy v. Kavitha Mahesh*****[II(2012) CLT 224 (SC)],** ***Mahendra Pal v. Ram Dass Malanger and others*** **[AIR 2000 SC 16]**, which also follow the above lines.

44. Citing the decision in ***Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and others*****[(2004) 7 SCC 181]**, the learned Senior Counsel for the petitioner has argued that there is vast difference between 'material facts' and 'full particulars' which are mentioned in Section 83(1) of the Act. In paragraph 6 of the said decision it has been held:

"Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (a) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party."

The facts in the decision noted *supra* are not *pari materia* to the facts of this case. Apart from the pleadings that it was with the knowledge and consent of the first respondent that the said officials were engaged in corrupt practice and that the first respondent had obtained and procured the assistance of the said Government officers to further the prospects of his election, no materials are pleaded to show as to how he has canvassed the assistance of those Government officers or as to when he had procured or obtained and the manner in which he has allegedly procured or obtained the assistance of such officers. The facts in the decision noted *supra* show that several materials were pleaded to bring out the corrupt practice.

45. It is essential and imperative for the election petitioner to set out with exactitude and precision the type of assistance as also the manner in which assistance was obtained or procured from each person. The material facts regarding the time, the date and the place of the assistance are also required to be set out in the particulars. The material

facts as to what assistance the appellant obtained or procured or abetted or attempted to obtain or procure, from which person, and how the assistance furthered the prospects of the appellant's election have to be pleaded with exactitude. It would not suffice to merely repeat the language of the statutory provision in the pleadings to constitute material facts within the meaning of Section 83 (1) of the Act.

46. The petitioner in an election petition cannot be permitted to have a fortune hunting to fish out materials by evidence on the basis of vague pleadings. It is necessary for an election petitioner to make the charges of corrupt practice with full responsibility and to prevent any fishing and roving inquiry and save the returned candidate from being taken by surprise. Vague pleadings which leave a wide scope to adduce any evidence, cannot be appreciated and acted upon. No amount of evidence can cure basic defects in the pleadings.

47. In this particular case, it seems that apart from reproducing the laws relating to the corrupt practices as contained in the Act, the petitioner has failed to set forth the material facts relating to such corrupt practices and also the full particulars of all the facts constituting such corrupt practices, in the election petition. It seems that the petitioner has spread a wide net as if it is a fishing expedition. Such a fishing and roving inquiry by taking the returned candidate by surprise cannot be permitted. Matters being so, this election petition does not reveal any cause of action and therefore, the election petition is liable to be rejected under Order VII Rule 11 CPC. Over and above it, when such material facts and full particulars are not being pleaded, this election petition is liable to be dismissed summarily.

In the result, this Election Petition is dismissed with costs to the first respondent.

All the interlocutory applications in this Election Petition are closed.

Sd/-

B.KEMAL PASHA, JUDGE

Sd/-

Registrar (Judicial)

[No. 82/KL-HP/03/2014]

By Order,

DARSUO THANG, Secy.

El.Pet..No.03 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A:TRUE COPY OF THE COMPLAINT BY ELECTION AGENT OF THE PETITIONER TO RETURNING OFFICER.

ANNEXURE B:TRUE COPY OF THE RTI APPLICATION BY THE PETITIONER TO THE RETURNING OFFICER.

ANNEXURE B1:TRUE ENGLISH TRANSLATION OF ANNEXURE B.

ANNEXURE C:TRUE COPY OF RTI REPLY FROM STATE PUBLIC INFORMATION OFFICER,COLLECTORATE,KANNUR.

ANNEXURE C1:TRUE ENGLISH TRANSLATION OF ANNEXURE C.

ANNEXURE D:TRUE COPY OF RTI REPLY FROM STATE PUBLIC INFORMATION OFFICER,COLLECTORATE,KASARGODE.

ANNEXURE D1:TRUE ENGLISH TRANSLATION OF ANNEXURE D.

ANNEXURE E:TRUE COPY OF THE REMITTANCE RECEIPT OF RS 2000/- AS SECURITY DEPOSIT BEFORE THIS HONOURABLE COURT.

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

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